IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
REVIEW PETITION NO.5 OF 2007
IN
WRIT PETITION NO.2558 OF 2006

Shree Ganesh Co-operative Housing Society (Proposed) & Ors. ...Petitioners.
V/s.
1.State of Maharashtra & Ors. ...Respondents.

Shri A.V.Anturkar with Shri Ashok Gade, advs. for the Petitioners.
Shri P.P.Kakade, AGP for Respondent Nos.1 and 2.
Shri G.A.Utangale for Respondent No.3.
Shri G.S.Godbole for Respondent Nos.4 and 5.

CORAM: B.H.MARLAPALLE &
J.H.BHATIA, JJ.

RESERVED ON : 14th February, 2007.
PRONOUNCED ON: 22nd February, 2007.

P.C.:

1. Heard the learned counsel for the Parties.

2. By an order dated 11th December, 2006, we had dismissed the Writ Petition No.2558 of 2006 summarily for the reasons recorded in that order. By this petition, the petitioners seek review of the said order on certain grounds.

3. Firstly, it is contended that on 11-12-2006 when the matter was called out, one junior advocate was present on behalf of the petitioners and senior counsel, Mr.C.U.Singh was busy before the another bench and

therefore, he could not attend the matter. There is no material to show that Mr.C.U.Singh, the learned senior counsel was to appear in the matter. In fact, Mr.Vipin Kamdi, the learned counsel for the petitioners had argued the matter at length at the stage of admission. It may be noted that Mr.Vipin Kamdi is not present in the present review petition nor his consent appears to have taken before filing it.

4. The second ground is that an architect of respondent no.5 had played certain fraud in collusion with the officers of respondent no.3 Slum Rehabilitation Authority and this fact came to the notice of the petitioners in December, 2006, i.e., after the dismissal of writ petition no.2558 of 2006. It is contended that in writ petition no.2497 of 2004, Krishna Galaxy Residents Association and Ors v. State of Maharashtra & Ors., Division Bench of this Court passed an order on 23rd November, 2006 wherein some irregularities were found and ineligible persons were included in the rehabilitation scheme. While giving certain directions, the Chief Executive Officer, Slum Rehabilitation Authority was also directed to consider the order passed by the Court and to file appropriate complaint before the police authorities against all involved including officers of the department. It is contended that in

that case also fraud was played by Jatin Shah, the architect of respondent no.5. Findings of that case are not relevant for the present matter and merely because the same architect was involved in both the projects, it can not be concluded that in this case also certain fraud was played.

5. Thirdly, it is contended that the list of hutment dwellers, which was submitted alongwith their alleged signatures contained names and signatures of 3 persons, who were already dead. It is further contended that the list also contained 22 names, with signatures purporting of those persons but those were the forged signatures and the said 22 members were not the signatories. It is contended that they had duly affirmed their affidavits on 18th July, 2006 but the same remained to be tendered before this Court. If affidavits were not tendered before this Court naturally, they could not be considered at the time of deciding the writ petition.

6. Mr.Anturkar vehemently contended that a rejoinder was submitted pointing out that as per the direction given by this Court in the earlier proceedings, complaints were made before the Slum Rehabilitation Authority making a grievance about the

persons, who were ineligible but that complaint was not addressed to and considered by the Slum Rehabilitation Authority in the order dated 27th February, 2006, which was challenged in the writ petition no.2558 of 2006. Mr.Anturkar contended that in the writ petition no.1560 of 2006 by the order dated 20th June, 2006, the Court had observed that if according to the petitioner, there are some irregularities like ineligible persons having been made eligible, it was always open to make complaint to respondent no.3, which would enquire into the same. It is contended that by virtue of the said order, the complaint was made but not considered. It may be noted that the Slum Rehabilitation Authority had passed the order dated 27th February, 2006 long before 20th June, 2006 when the order was passed by this Court in Writ Petition No.1560 of 2006. Apart from that, if there was really such grievance, it could be brought to the notice of Slum Rehabilitation Authority and he was required to consider. In fact, in paragraph 7 of the order passed by Slum Rehabilitation Authority, he had noted that the petitioners had placed no circumstantial evidence on the point of consent of the 70% of the eligible slum dwellers. Thus, it appears that he had considered the objection but he had not discussed the evidence in detail.

7. Mr.Godbole, the learned counsel for respondent nos.4 and 5 pointed out from the order dated 20th June, 2006 passed in writ petition no.1560 of 2006 itself that the Court had observed that in annexure II, there were 411 names and the competent authority had found only 308 persons to be eligible and out of them 267 members had given consent in favour of respondent no.5 and thus, more than 70% members had given consent in favour of respondent no.5. It was also pointed out in that writ petition that after letter of intent was issued, 102 persons had withdrawn their consent but they had not withdrawn their membership of respondent no.4 Society to whom the letter of intent was given. This objection was overruled. Today, Mr.Anturkar tried to contend that 160 persons have withdrawn the consent in favour of respondent no.5. If any of them has withdrawn the consent after issuance of letter of intent that makes no difference as found in the order dated 20th June, 2006 itself.

8. Even if the contention of the petitioners, that names of 3 dead persons were included and signatures of 22 persons were forged though they had not given consent, is accepted, for the sake of arguments, still the total number of the members who had given consent in favour of respondent no.5 would be 242, which is more

than 70% of the total 308 persons who were found eligible.

9. In view of the facts noted above, we find no substance and merit in the review petition. Further, it may be noted that if at all certain ineligible persons are included in the list, proper enquiry can be made and action can be taken by the competent authority. Dismissal of the writ petition no.2558 of 2006 by our order dated 11th December, 2006 does not come in the way of such enquiry and an appropriate action.

10. For the aforesaid reasons, we find no merit in the review petition and it stands dismissed.

(J.H.Bhatia, J.) **(B.H.Marlapalle, J.)**